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1 - Judges Back EPA's GHG Permit Regime But Grapple With Texas Takeover, InsideEPA, 5/9/13

<http://insideepa.com/201305072433600/EPA-Daily-News/Daily-News/judges-back-epas-ghg-permit-regime-but-grapple-with-texas-takeover/menu-id-95.html>

A panel of federal appellate judges appears likely to back EPA's efforts to force states to create a permitting regime for greenhouse gases (GHGs), but during May 7 oral arguments the agency appeared to be on shakier ground in a separate but related case on whether it acted lawfully when it imposed a federal GHG permitting regime on Texas.

2 - NM Horse Slaughter Plant Faces More Hurdles, PublicNewsService, 5/9/13

<http://www.publicnewsservice.org/index.php?/content/article/32347-1>

ROSWELL, N.M. - New Mexico's Valley Meat Co. has another obstacle in its path to becoming a horse slaughterhouse. A Larkspur, Colo., group, Front Range Equine Rescue, has notified the Roswell company and two federal agencies - the Environmental Protection Agency and the U.S. Department of Agriculture - of its intent to sue for violation of the Clean Water Act.

3 - Proposed EPA standards aimed at improving the environment could fuel higher gasoline prices, Oklahoman 5/7/13

<http://newsok.com/proposed-epa-standards-aimed-at-improving-the-environment-could-fuel-higher-gasoline-prices/article/3807469>

The U.S. Environmental Protection Agency's proposed rules for cleaner-burning gasoline and more efficient car and truck engines are drawing predictable responses. The Tier 3 Vehicle Emission and Fuel Standards Program would reduce the sulfur content allowed in gasoline and require vehicle manufacturers to improve engines to reduce emissions. The EPA has described the rules as an extension of the Tier 2 standards rolled out beginning in 2000. Those rules, among other things, reduced gasoline sulfur levels to 30 parts per million, down from 300. The proposed new rules would drop that level to 10 parts per million.

4 - David Vitter, other Republicans block confirmation vote on EPA nominee, NOLA, 5/9/13

http://www.nola.com/politics/index.ssf/2013/05/vitter_and_other_republicans_b.html#incart_river

WASHINGTON -- Republicans on the Senate Environment and Public Works Committee, led by Sen. David Vitter, R-La., didn't show up Thursday (May 9) for a scheduled confirmation vote on Environmental Protection Agency administrator nominee Gina McCarthy, effectively blocking a vote.

5 - County votes to keep West a disaster area, WacoTrib, 5/9/13

http://www.wacotrib.com/news/mclennan_county/county-votes-to-keep-west-a-disaster-area/article_b8f9432c-21d5-53d0-8261-2f256606360d.html

McLennan County commissioners Tuesday voted to continue County Judge Scott Felton's disaster declaration for the county as it relates to the April 17 fire and explosion at West Fertilizer Co., something it now routinely does each week. "It allows me, as county judge, to sign off on everything applicable to any grants or state-agency funding that may come through the county," Felton said. "Some comes through the city itself, but some comes through us, and this gives me authority to act on it."

6 - Texas Dems hold water money hostage for school funding, FWTele, 5/9/13

<http://www.star-telegram.com/2013/05/10/4839891/norman-texas-dems-hold-water-money.html>

It's real simple, Gov. Rick Perry said this week. If legislators want to avoid returning for a special session in the heat and swelter of Austin this summer, they must pass \$1.8 billion in tax cuts and \$2 billion in funding for water infrastructure before their current session ends on Memorial Day, May 27. Watch out for that second part. Water funding plans have hit a wall in the House, not because members don't want to approve them but because those plans are being held hostage in a high-stakes standoff.

7 - Republicans Boycott Senate Panel Vote On McCarthy Nomination to Lead EPA, BNA, 5/10/13

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=31050445&vname=dennotallissues&jd=a0d8k3h3c2&split=0

Republicans on the Senate Environment and Public Works Committee escalated their objections to the nomination of Gina McCarthy to be Environmental Protection Agency administrator May 9, boycotting a committee vote on her nomination. Sen. Barbara Boxer (D-Calif.), the committee chairwoman, delayed the vote after Republicans refused to participate. Boxer said she will reschedule the vote when the committee can assemble a quorum of members, which will depend on the ability of Sen. Frank Lautenberg (D-N.J.), who has been ill, to attend. Several EPA observers told BNA May 9 they do not think the Republican boycott will jeopardize McCarthy's confirmation. White House spokesman Jay Carney also said the Obama administration is confident McCarthy will be confirmed.

8 - Water Pollution: EPA Seeks Rehearing of Appellate Ruling On Policies for Blending, Mixing Zones, BNA, 5/10/13

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=31050472&vname=dennotallissues&jd=a0d8k9n1h1&split=0

The Environmental Protection Agency has asked for a rehearing by a federal appeals court of a decision in March that vacated two separate EPA actions aimed at controlling pollution from wastewater treatment plants (Iowa League of Cities v. EPA, 8th Cir., No. 11-3412, rehearing petition 5/9/2013).

9 - Boxer promises McCarthy vote ASAP in face of Republican boycott , EENEWS, 5/10/13

<http://www.eenews.net/Greenwire/2013/05/09/1>

After a Republican boycott scuttled a confirmation vote this morning on U.S. EPA administrator nominee Gina McCarthy, Senate Environment and Public Works Chairwoman Barbara Boxer promised Democrats would move quickly to hold a vote -- even if it means changing committee rules.

10 - EPA Proposes Weaker Methanol Risk Estimates In Latest Draft IRIS Analysis, InsideEPA, 5/10/13

<http://insideepa.com/201305092433824/EPA-Daily-News/Daily-News/epa-proposes-weaker-methanol-risk-estimates-in-latest-draft-iris-analysis/menu-id-95.html>

EPA in a new draft Integrated Risk Information System (IRIS) assessment is weakening its non-cancer risk estimates for methanol from what the agency proposed in a 2011 draft, following concerns from many peer reviewers who considered the earlier draft estimates overly stringent.

News Headline: Judges Back EPA's GHG Permit Regime But Grapple With Texas Takeover |

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News Text: A panel of federal appellate judges appears likely to back EPA's efforts to force states to create a permitting regime for greenhouse gases (GHGs), but during May 7 oral arguments the agency appeared to be on shakier ground in a separate but related case on whether it acted lawfully when it imposed a federal GHG permitting regime on Texas.

Two of the three judges on the panel raised doubts over whether the state and industry petitioners have standing to challenge EPA's broad actions to require states to permit GHGs, though the panel appeared concerned about the mechanism EPA used to find Texas' program inadequate and in need of GHG provisions.

The three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit heard arguments in Utility Air Resources Group (UARG), et al. v. EPA, et al., and State Of Texas, et al. v. EPA, et al., two closely related cases that test EPA's ability to impose GHG permitting under the prevention of significant deterioration (PSD) air permit program.

The cases focus on a series of steps EPA took to require states to permit GHGs from new or modified facilities after its "tailoring" rule took effect on Jan. 2, 2011. Under the rule, the agency raised Clean Air Act pollution thresholds that trigger PSD permit review to account for GHGs, which are emitted in greater quantities than conventional pollutants.

At the time, 13 states did not include GHG permitting in their state implementation plans (SIPs), blueprints for complying with federal air standards. Facing the threat of losing the ability to issue valid PSD permits for GHG-emitting sources, which would have blocked construction of new sources, 12 of those states agreed with EPA to eventually submit corrected SIPs to include GHG permitting. Texas, however, refused.

Among the actions at issue is EPA's 2010 disapproval of several states' SIPs because they were not adapted to allow GHG permitting to begin in line with the tailoring rule. Some states, however, were unable or unwilling to change their own SIPs in time, prompting EPA to intervene. EPA subsequently adopted federal implementation plans (FIPs) for some states, including Texas, a move the state now says is an unlawful preemption of state permitting authority.

Texas has refused to implement a permit program because it is opposed to GHG regulation in principle and the state has so far failed to replace the FIP with an EPA-approved SIP. In separate litigation pending before the Supreme Court, Texas is urging the justices to revoke EPA's air act authority to regulate GHGs.

In arguments in UARG, which focused on EPA's broader actions requiring states to permit GHGs, Judges David Tatel and Judith Rogers appeared sympathetic to EPA's arguments that the petitioners lacked standing to sue over EPA's Dec. 13, 2010, "finding of substantial inadequacy and SIP Call," the decision in which EPA found that plans of Texas and other states inadequate for the purposes of GHG permitting.

Without modification, the inadequate SIPs contain PSD permit thresholds of only 100 tons per year (tpy) or 250 tpy, very low limits that would force the permitting of millions of small GHG sources -- a practical impossibility, EPA argues. Therefore, EPA had to fill the regulatory void itself where necessary to avoid a

de facto construction moratorium for sources requiring GHG permits but unable to obtain them from the state.

"Don't you have a serious standing problem? Everything EPA did alleviated the construction moratorium," Tatel asked attorney David Rivkin, representing Texas.

Tatel compared the pending case to the D.C. Circuit's ruling in *Coalition for Responsible Regulation v. EPA*, the case now on appeal to the Supreme Court, where the court unanimously found that industry petitioners lacked standing to challenge the tailoring rule because the agency's action was not injurious since it allowed many small sources to escape permitting by raising the PSD pollution thresholds.

"The holding of *Coalition*, that states were not injured by the tailoring rule, seems to me a lot like this case," he said.

Rogers similarly asked Rivkin what injury the court could address, given that the state argues it should have been given three years to change its SIP, as the air act's SIP provisions allow, yet also stated it had no intention of changing its SIP.

Rivkin replied that Texas has suffered injury by being deprived of its sovereign rights under the air act's system of cooperative federalism. He said that EPA gave Texas only three weeks to modify its SIP or face a construction moratorium, which amounts to coercive behavior.

Judge Brett Kavanaugh, who found industry has standing to challenge the tailoring rule, agreed with Texas's position that being deprived of three years to modify its SIP "sounds like injury to me."

Outside of the standing question, Texas and UARG had disagreed with EPA's premise that there need be a construction moratorium because it disagrees with EPA's position that the air act directly imposes an obligation on sources not to emit regulated pollutants in contravention of PSD rules even if the state lacks a SIP.

Both had challenged the notion that PSD rules can operate independently of SIPs, which are the normal implementing mechanism for PSD permitting, they argue.

But Tatel and Rogers reminded Rivkin and UARG lawyer Henry Nickel that the direct applicability of air act sections 165 and 167, prohibiting sources from contravening PSD rules, was a central finding of the decision in *Coalition* -- though Rogers acknowledged that states without valid SIPs may be "in a bind" when they are required to permit new pollutants.

Tatel repeatedly said that the panel's questions were predicated on the assumption that the court is bound by its own precedent on this issue in *Coalition*.

And in response to questions from Tatel and Rogers, both Rivkin and Nickel conceded that Texas' stated aim in the two lawsuits -- vacatur of the SIP Call and FIP imposed on the state -- might indeed result in a construction moratorium that would hurt Texas industry, if the *Coalition* precedent on direct applicability of PSD stands.

Nickel, for example, said that EPA violated fundamental principles of administrative law by not first altering its own regulations, then allowing states three years to modify their own SIPs, under air act section 166(a)(6). There "was no administrative action" to change the regulation EPA adopted in 1990

under section 166(a)(6) to allow three years for such changes. "This is a brand-new regulatory program of real complexity," and the three years are therefore essential, Nickel argued.

Nickel said that contrary to the D.C. Circuit's finding in Coalition, there is no self-executing statutory language in the air act which overrides EPA's implementing "legislative rule" allowing states three years to modify SIPs. However, if the precedent stands, "then we don't have a case, and we don't have standing."

Department of Justice attorney Madeline Fleisher, representing EPA, said that the "starting point" in the case has to be the Coalition finding on direct applicability of PSD, and that EPA's own implementing regulations for SIP revision are not at issue as UARG claims, because the PSD provisions of the statute are self-executing. EPA did not usurp states' sovereign rights, Fleisher said, but merely tried to plug a "temporary gap" in their permitting authority.

Kavanaugh asked Fleisher why EPA is overlooking the industry and state argument that the SIP is at the center of the whole PSD program. "The problem with that view is that it has no basis in the language of the Clean Air Act," Fleisher said, adding that "you can certainly have a world" where PSD rules apply directly to sources independent of SIPs. -- Stuart Parker

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NM Horse Slaughter Plant Faces More Hurdles

ROSWELL, N.M. - New Mexico's Valley Meat Co. has another obstacle in its path to becoming a horse slaughterhouse.

A Larkspur, Colo., group, Front Range Equine Rescue, has notified the Roswell company and two federal agencies - the Environmental Protection Agency and the U.S. Department of Agriculture - of its intent to sue for violation of the [Clean Water Act](#).

Bruce Wagman, a partner at Schiff Hardin, a law firm representing Front Range Equine Rescue, said this issue goes back at least five years.

"This is about the failure to obtain a permit for discharge of contaminants from storm water," he said. "It's an ongoing violation because, as far as we know, they had a Grant of Inspection for cow slaughter all those years and were in violation of the Clean Water Act every day they were doing it."

A USDA Grant of Inspection is required before meat from a slaughterhouse can be sold. Wagman said the agency doesn't necessarily look at Clean Water Act issues when it decides on this document, so it is possible to be approved for business without being in compliance.

Valley Meat's attorney, A. Blair Dunn, said the company will not be out of compliance by the end of the 60-day time period in the notice to sue.

While the suit alleges that Valley Meat hasn't been in compliance with the Act, Wagman said, it is not known whether it has polluted water in the area. The waterways most likely to be affected, he said, are the Spring River Canal and the Pecos River - a place where people fish and swim.

"The Pecos River runs near Valley Meat and communicates with underground channels that go through nearby lakes and streams in New Mexico," he said.

Tracy Hughes, an environmental attorney with High Desert Energy and Environment Law Partners in Santa Fe, explained what can be found in storm water runoff.

"In industrial facilities, it's anything that a company may put in their parking lot or in their yard that may be stored outside," she said. "Then the precipitation falls on it, and that becomes runoff, and it can be oil and antifreeze, anything that leaks out of your car."

Getting the necessary permit to comply with the Clean Water Act would not be a lengthy process, Hughes said. However, if Valley Meat Co. is considered a "new source" because of its lack of a previous permit, she said, there would be a public notice and 30 days for public

comment.

A report on developing a New Mexico stormwater pollution plan is online at [epa.gov](https://www.epa.gov).

Proposed EPA standards aimed at improving the environment could fuel higher gasoline prices

The Environmental Protection Agency has proposed a new “Tier 3” gasoline standard that would reduce the sulfur content allowed in gasoline and require vehicle manufacturers to improve engines to reduce emissions.

The U.S. Environmental Protection Agency's proposed rules for cleaner-burning gasoline and more efficient car and truck engines are drawing predictable responses.

EPA proposes Tier 3 gasoline standard

May 7 EPA proposes Tier 3 gasoline standard

The massive refinery investments it would require could drive up the cost of making gasoline and weaken the nation's energy security without producing much, if any, environmental benefit.”

Patrick Kelley

American Petroleum Institute

The Tier 3 Vehicle Emission and Fuel Standards Program would reduce the sulfur content allowed in gasoline and require vehicle manufacturers to improve engines to reduce emissions.

The EPA has described the rules as an extension of the Tier 2 standards rolled out beginning in 2000. Those rules, among other things, reduced gasoline sulfur levels to 30 parts per million, down from 300. The proposed new rules would drop that level to 10 parts per million.

Predictably, the proposal has drawn praise from environmental organizations and criticism from the oil and refining industries.

“These Tier 3 standards are absolutely necessary. They are absolutely the right thing to do,” said Jesse Prentice-Dunn, a policy analyst with the Sierra Club in Washington. “Right now, we have more than one in three Americans living where the air is sometimes unsafe to breathe. We've got record childhood asthma. Air pollution is causing a whole host of health issues. These standards will substantially reduce smog-forming pollution and dramatically reduce asthma attacks, premature deaths from air pollution, and it will make a big, big difference.”

The EPA said the rules would add about 1 cent per gallon to the cost of gasoline and add about \$130 to the cost of new cars and trucks while annually preventing 820 to 2,400 premature deaths, 3,200 hospital admissions and asthma-related emergency room visits and 1.8 million days of lost time at school, work and minor activities.

The oil and gas industry said the EPA is exaggerating potential benefits and underestimating costs.

Patrick Kelley, the American Petroleum Institute's senior downstream policy adviser, called the proposal “hard to justify and potentially very harmful.”



Everything New Orleans

David Vitter, other Republicans block confirmation vote on EPA nominee

[Bruce Alpert, NOLA.com | Times-Picayune](#) By [Bruce Alpert, NOLA.com | Times-Picayune](#)

on May 09, 2013 at 9:40 AM, updated May 09, 2013 at 8:07 PM

WASHINGTON -- Republicans on the [Senate Environment and Public Works Committee](#), led by Sen. [David Vitter](#), R-La., didn't show up Thursday (May 9) for a scheduled confirmation vote on Environmental Protection Agency administrator nominee Gina McCarthy, effectively blocking a vote.

"For too long EPA has failed to deliver on the promises of transparency espoused by President [Barack Obama](#), former Administrator Lisa Jackson, and by [Gina McCarthy](#)," Vitter and his six Republican colleagues said in a letter to the panel's chairwoman, Democrat [Barbara Boxer](#), informing her that Republicans wouldn't attend Thursday's meeting. "Accordingly, the Republicans on the EPW Committee have asked EPA to honor five very reasonable and basic requests in conjunction with the nomination of Gina McCarthy, which focus on openness and transparency."

"While Chairman Boxer has allowed EPA adequate time to fully respond before any mark-up on the nomination, EPA has stonewalled on four of the five categories."

Boxer said that McCarthy has answered an unprecedented number of questions from Republicans, more than 1,000, and that the GOP was simply obstructing her nomination because they are trying to "force their pro pollution policies" against the overwhelming majority of the American people who favor strong enforcement of the Clean Air Act and other environmental laws.

"They are fringe. They are out of the mainstream," Boxer said.

Boxer said the Republicans apparently would prefer an oil industry or coal company owner to run the EPA, rather than McCarthy who has worked as a top environmental administrator at the EPA for the last two years and previously worked for four Republican governors.

Boxer and other Democrats on the committee spent about 40 minutes Thursday morning denouncing the "no show" Republicans before adjourning the meeting without a vote on the McCarthy nomination.

Vitter has complained that he and other Republican members received evasive and unresponsive requests for information on fake email addresses used by former Environmental Protection Agency Administrator Lisa Jackson, a New Orleans native. He has also complained that he hasn't gotten responsive answers to his

requests on how the EPA made certain rulings and how it used or didn't use cost-benefit analysis in promulgating regulations and rules.

Vitter said this is not an attempt to get the administration to change its view on limiting carbon emissions, which Republicans fear will hurt the economy.

"It is important that we're not asking or expecting the president or his administration to change their bedrock views," Vitter said. But he said one way to ease the divide between Republicans and the administration on environmental regulations is to insist on good science and full disclosure about the impact of regulations -- something he says the EPA hasn't been providing.

Politico [reported](#) Thursday that Vitter had sent McCarthy 653 separate questions. A Vitter spokesman said that the real number, not counting one or two word follow-up questions, was about 430.

The spokesman said McCarthy got more questions than other nominees because she has been an assistant administrator at the agency for several years and therefor has direct knowledge of the agency's most contentious decisions on emissions and other matters.

Boxer said it is indeed strange that while she and Vitter battle over the McCarthy nomination, she's working with him on the floor as the managers of a water resources bill that is pending on the Senate floor.

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County votes to keep West a disaster area

By MIKE COPELAND mcopeland@wacotrib.com | Posted: Wednesday, May 8, 2013 12:01 am

County votes to keep West a disaster area

McLennan County commissioners Tuesday voted to continue County Judge Scott Felton's disaster declaration for the county as it relates to the April 17 fire and explosion at West Fertilizer Co., something it now routinely does each week.

"It allows me, as county judge, to sign off on everything applicable to any grants or state-agency funding that may come through the county," Felton said. "Some comes through the city itself, but some comes through us, and this gives me authority to act on it."

Commissioners also voted to instruct the county's purchasing department to solicit proposals for collecting and disposing of debris created by the disaster.

Damage costs could reach \$100 million for homes and property destroyed, according to Mark Hanna, spokesman for the Insurance Council of Texas.

"That is not something a community the size of West would normally do, and we want to do everything we can to relieve some of the burden," Felton said. "I believe there are funds we might be able to access through the Legislature. I know we're going to try."

Precinct 3 Commissioner Will Jones has been attending daily meetings of West City Council. And Frank Patterson, the Waco-McLennan County emergency management coordinator, is serving as incident commander for recovery efforts in West

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Star-Telegram

Texas Dems hold water money hostage for school funding

Posted Friday, May. 10, 2013

BY MIKE NORMAN

mnorman@star-telegram.com

It's real simple, Gov. Rick Perry said this week.

If legislators want to avoid returning for a special session in the heat and swelter of Austin this summer, they must pass \$1.8 billion in tax cuts and \$2 billion in funding for water infrastructure before their current session ends on Memorial Day, May 27.

Watch out for that second part. Water funding plans have hit a wall in the House, not because members don't want to approve them but because those plans are being held hostage in a high-stakes standoff.

State Rep. Lon Burnam, a Fort Worth Democrat, and I have a simmering disagreement over the House's failure to finance a 50-year water plan. Burnam and other Democrats say they won't give up water funding until they get school funding in trade.

The tax cut Perry wants might be within reach. The House and Senate both have passed tax reduction bills, although both have a way to go to reach the governor's \$1.8 billion goal.

The latest installment came Wednesday night when the House approved \$667 million in franchise tax cuts.

It's hard to tell yet whether what's been passed already and what might be added to it are the right tax cuts in Perry's eyes. Lt. Gov. David Dewhurst says the Senate shares the governor's enthusiasm for tax cuts but may not do it in exactly the way or amount he wants.

Perry was pretty definite on Wednesday.

"It should be no surprise that if folks want to go home at the end of this legislative session, send me \$1.8 billion worth of tax relief," he said. "Send me a balanced budget that has no fee increases for transportation and \$2 billion for infrastructure for water, and everyone can go home and enjoy their summer."

The money for water infrastructure and more is available in the state's almost \$12 billion rainy-day fund. The idea is to put that much in a revolving fund to help entities across the state sell bonds for water projects. Burnam and others are blocking the way.

"House Democrats believe Texas should first restore the \$5.4 billion cut from public education before spending money from the Rainy Day Fund for other issues," Burnam and Rep. Chris Turner wrote in a letter to the editor published last week. "And since a drawdown from the Rainy Day Fund requires the support of two-thirds of the House, the minority party has more leverage than usual — and we intend to use that leverage to help our schoolchildren."

I say the Dems are wrong. I don't blame them for their tactics, but it's not smart to use rainy-day fund money to pay for ongoing operation of schools.

Rainy-day money should be used either in a crisis or in one-time allocations to pay for things that won't have to be paid for over and over again. If it's used to help restore the \$5.4 billion cut from schools two years ago, that same hole will have to be filled again when the Legislature meets in 2015, and again in 2017, and again in 2019, and so forth.

Burnam and others have told me it's worth the risk that they'll be able to come back in two years and find more stable funding. I don't buy that.

Texas has the money this year to adequately and properly fund schools. If lawmakers choose not to do that, or if their definition of adequate funding differs from what educators or others might say, that's their responsibility.

But it shouldn't come from the rainy-day fund, and it shouldn't block passage of the proposed one-time funding for water infrastructure.

Mike Norman is editorial director of the Star-Telegram. 817-390-7830 Twitter: [@mnorman9](https://twitter.com/mnorman9)

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EPA

Republicans Boycott Senate Panel Vote On McCarthy Nomination to Lead EPA



By Jessica Coomes and Anthony Adragna

Republicans on the Senate Environment and Public Works Committee escalated their objections to the nomination of Gina McCarthy to be Environmental Protection Agency administrator May 9, boycotting a committee vote on her nomination.

Sen. Barbara Boxer (D-Calif.), the committee chairwoman, delayed the vote after Republicans refused to participate. Boxer said she will reschedule the vote when the committee can assemble a quorum of members, which will depend on the ability of Sen. Frank Lautenberg (D-N.J.), who has been ill, to attend.

Several EPA observers told BNA May 9 they do not think the Republican boycott will jeopardize McCarthy's confirmation. White House spokesman Jay Carney also said the Obama administration is confident McCarthy will be confirmed.

'Stop Gumming Up the Works.'

Carney told reporters that Republicans have demonstrated a "predilection for obstructionism that is bad for the functioning of the federal government in important areas." He called on Senate Republicans "to stop gumming up the works when it comes to the confirmation process of nominees who are enormously qualified for the jobs that the president has asked them to fill and to get about the business of confirming them."

Senate Majority Leader Harry Reid (D-Nev.) also criticized the Republicans' boycott in remarks on the Senate floor May 9, and he said he will ensure that McCarthy "will have her day in the Senate."

"This type of blanket, partisan obstruction used to be unheard of," Reid said. "Now it has become an unacceptable pattern. Republicans will use any procedural roadblock or stall tactic available to deny the president qualified nominees."

Republicans Push for Transparency

Republicans on the Senate committee have expressed frustrations with McCarthy's responses to their questions about transparency in the agency.

Sen. David Vitter (R-La.), the committee's ranking member, has pressed EPA for answers on whether McCarthy has used private email addresses to conduct official business, on the release of technical data for scientific air pollution studies, on conducting cost-benefit analyses for rules, and on tracking petitions for rulemaking, notices of intent to sue, and settlement negotiations (79 DEN A-9, 4/24/13).

After McCarthy's confirmation hearing April 11, Vitter submitted additional written questions to McCarthy, and he released her answers May 6 in a 123-page document (88 DEN A-13, 5/7/13).

In her answers, she provided Senate Republicans with few specific commitments for the agency's regulatory agenda over the next few years, but she defended the work she has done since 2009 as the agency's assistant administrator for air and radiation.

Vitter told reporters at a press conference May 9 that the length of the delay for the committee vote

would be "completely up to EPA." EPA did not respond to a request for comment May 9 on whether McCarthy will draft additional answers to the Republicans' questions. McCarthy did not attend the May 9 Senate committee meeting.

Opposition to EPA Policies, Not McCarthy

Vitter said the Republicans' opposition to the nomination is less about McCarthy and largely about EPA's broader transparency and openness policies. He said McCarthy has been a top official at an agency that "has that dismal record on openness and transparency. I don't really care about a chummy personal relationship if we're constantly getting stonewalled on basic openness and transparency requests."

As EPA air chief since 2009, McCarthy has overseen some of the agency's most significant air pollution regulations, including mercury and air toxics standards for power plants and a proposed rule to establish greenhouse gas emissions limits for new power plants.

President Obama announced McCarthy's nomination March 4 following the departure of former administrator Lisa Jackson.

Bob Perciasepe, who was the agency's deputy administrator during Obama's first term, has been the acting administrator since Jackson's departure.

Sen. John Barrasso (R-Wyo.), a committee member, told reporters at a press conference May 9 that EPA has satisfactory leadership under Perciasepe.

"The acting administrator of the EPA, Bob Perciasepe, is more than capable of managing the agency until a nominee is confirmed," Barrasso said. "He knows what he's doing there, and I think we should be absolutely willing to wait on a confirmation of Gina McCarthy."

Boxer Urged to Reschedule Voted

Vitter and the other seven Republican committee members sent a letter to Boxer on May 9, shortly before the vote was scheduled to begin, asking her to reschedule.

Boxer said the Republicans' absence was disrespectful to McCarthy, who submitted answers to 1,000 questions from Republicans. The problem, Boxer said, is that McCarthy's answers do not reflect a "pro-polluter, fringe philosophy."

"They've gotten the answers to the questions, folks," Boxer said. "They don't like the answers."

The Environment and Public Works Committee's rules say that at business meetings, one-third of the committee members, at least two of whom are minority members, constitute a quorum to take action. There is an exception, however, that says no matter may be reported to the Senate unless a majority of committee members votes in person.

The committee has 18 members, which means 10 members could vote to advance the nomination.

Although the committee has 10 Democrats, only eight attended the May 9 meeting. Lautenberg has been absent from the Senate in recent weeks due to illness. Sen. Max Baucus (D-Mont.) also did not attend.

Baucus's office told BNA the senator had another meeting at the same time as the committee meeting, but he was prepared to leave if his presence was needed for a vote.

Boxer said it was not her intent for the committee to vote on McCarthy's nomination with only Democrats, but that is likely what will happen. She said she will reschedule the vote when all 10 Democrats can attend, although Lautenberg's presence depends on his health.

"We will attempt to get everyone here," Boxer said.

Boxer Defends McCarthy

During the meeting, Boxer also defended McCarthy, calling her "one of the most qualified, perhaps the most qualified, nominee to ever head the Environmental Protection Agency."

"By the time this is over, I hope the Republicans will recognize this is one of the best nominees either party could ever find to head the EPA," Boxer said, adding "every nominee is entitled to a vote, particularly a nominee like this one."

Several EPA observers told BNA May 9 that they expect McCarthy to be confirmed, despite the Republicans' boycott of the committee vote.

Bill Becker, executive director of the National Association of Clean Air Agencies, told BNA in a statement that it is disappointing McCarthy's nomination has become political.

"Gina McCarthy deserves a vote before the full Senate as soon as possible so she can begin carrying out the important business of EPA Administrator," Becker said. "Her nomination is in no danger."

John Walke, clean air director for the Natural Resources Defense Council, also expressed confidence that McCarthy will be confirmed, calling the boycott "a tempest in a Tea Party pot."

"I don't believe this will fundamentally change a minority committee-EPA dynamic that was already established with Senator Vitter's combative letters to EPA and the unprecedented carpet-bombing with 1,079 Republican questions to Gina McCarthy," Walke said. "Those tactics had already set an obstructionist tone from the minority."

Martin Hayden, Earthjustice's vice president for policy and legislation, in a statement to BNA, called the Republicans' actions "a tantrum that will pass."

Other Obstacles on Horizon

Separately, Sens. John Boozman (R-Ark.) and Jeff Sessions (R-Ala.), who both sit on the committee, told reporters May 8 they will consider filibustering McCarthy's nomination when it comes to the Senate floor because of her responses to the Republicans' questions.

Meanwhile, Sen. Roy Blunt (R-Mo.) told reporters May 8 the hold he placed on McCarthy's nomination remains in place.

Blunt announced the hold in March, and he said it would remain in effect until the Obama administration provides a schedule for the release of a draft environmental impact statement for the St. Johns Bayou and New Madrid Floodway Project, which would close a 1,500-foot gap in the Mississippi River levee system (90 DEN A-22, 5/9/13).

He said EPA has not contacted him about the project.

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**Environment & Safety
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91 DEN A-20

Water Pollution

EPA Seeks Rehearing of Appellate Ruling On Policies for Blending, Mixing Zones



By Amena H. Saiyid

The Environmental Protection Agency has asked for a rehearing by a federal appeals court of a decision in March that vacated two separate EPA actions aimed at controlling pollution from wastewater treatment plants (*Iowa League of Cities v. EPA*, 8th Cir., No. 11-3412, rehearing petition 5/9/2013).

In a filing with the U.S. Court of Appeals for the Eighth Circuit, EPA said the March 25 ruling by a three-judge panel misconstrued correspondence from the agency on wastewater treatment processes as binding regulations.

In the petition for rehearing both by the panel and by the full Eighth Circuit, EPA said the ruling was at odds with other appellate decisions (58 DEN A-9, 3/26/13).

The three-judge panel for the Eighth Circuit declared the two letters that EPA sent in June 2011 and September 2011 to Sen. Charles Grassley (R-Iowa) regarding wastewater treatment processes as procedurally invalid because they imposed requirements on utilities without going through the notice-and-comment procedures of a rulemaking.

The June 2011 letter reinforced EPA's position on "mixing zones" of high pollutant concentrations created in receiving waters immediately below points of wastewater discharges, while the September 2011 letter spelled out the agency's policy on blending of partially treated and treated wastewater within a utility prior to discharge into the receiving waters.

The letters were based on draft guidance for blending and final guidance on mixing zones. The agency essentially barred use of mixing zones in waters designated for primary contact recreation and prohibited the practice of blending.

EPA Exceeded Authority

The panel said it would vacate the agency's blending policy as exceeding statutory authority because it "would impose the effluent limitations of the secondary treatment regulations internally, rather than at the point of discharge into navigable waters." On the issue of mixing zones, the court did not say the policy violated the Clean Water Act, but it ruled that EPA had to follow rulemaking procedures.

EPA in its May 9 rehearing petition disagreed with the court's ruling that the letters were "definitive."

Citing Section 509(b)(1)(E) of the Clean Water Act, which allows for judicial review of an EPA effluent limitation, EPA said, "Legal effect is what counts for purposes of [Clean Water Act] Section 509(b)(1)(E), not whether, as the panel focused on, a regulated entity or a state permitting authority has subjectively perceived EPA's responses to Senator Grassley as binding directives."

Moreover, the agency said, "EPA's statements will not have any legal effect on any facility until they are actually applied in a permit proceeding, and if that occurs, as noted above, the affected [publicly owned treatment work] would have full rights to judicial review. The legality of the permit will be tested based on its fidelity to the CWA and applicable regulations, not EPA's letters."

EPA then went on to say that the panel's conclusion that the Clean Water Act does not authorize EPA to regulate internal waste streams in a wastewater treatment plant conflicts with at least two other appellate decisions. The agency cited the 1988 decision in *Tex. Mun. Power Agency v. EPA*, 836 F.2d 1482 (5th Cir. 1988) in which the U.S. Court of Appeals for the Fifth Circuit upheld "the imposition of effluent limitations and standards to internal waste streams."

For More Information

The petition for rehearing in *Iowa League of Cities v. EPA* is available at http://www.bloomberglaw.com/public/document/Iowa_League_of_Cities_v_EPA_Docket_No_1103412_8th_Cir_Nov_04_2011/2.

BN A Snapshot

Iowa League of Cities v. EPA, 8th Cir., No. 11-3412, rehearing petition 5/9/2013

Key Development: EPA asks for a rehearing of an Eighth Circuit ruling on the agency's blending and mixing zone policies.

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THE LEADER IN ENERGY & ENVIRONMENTAL POLICY NEWS

1. EPA:

Boxer promises McCarthy vote ASAP in face of Republican boycott

Jason Plautz and Jean Chemnick, E&E reporters

Published: Thursday, May 9, 2013

After a Republican boycott scuttled a confirmation vote this morning on U.S. EPA administrator nominee Gina McCarthy, Senate Environment and Public Works Chairwoman Barbara Boxer promised Democrats would move quickly to hold a vote -- even if it means changing committee rules.

Speaking after Democrats spent an hour of meeting time blasting boycotting Republicans for "obstructionism," Boxer (D-Calif.) said she would approve McCarthy's nomination with only Democratic votes if Republicans continue their boycott.

"That was not my intention. I would not do that unless forced to," Boxer said. "I am asking my Republicans to come home, to come back to your responsibility."

Republicans explained their boycott by saying EPA had "stonewalled" their concerns about agency transparency from the agency. The absence of ranking member David Vitter (La.) and seven other Republicans left Democrats shy of the quorum needed to send McCarthy's confirmation to the Senate floor.

At a press conference this morning, Vitter said Republicans would stand firm until McCarthy satisfies their demands that the agency improve transparency.

"We're not asking the Obama administration to walk away from their views about carbon or anything else," Vitter said. "We are asking for openness and transparency, and we are asking that present law be followed in a full and fair and reasonable way."

Boxer said she was told of the Republican boycott an hour before the scheduled start of the McCarthy markup. Republicans huddled last night in the Capitol, but they didn't disclose their plans until this morning.

"Denying a president's nominee who has this level of experience ... is wrong. It's unacceptable," Boxer said. "This shows how outside the mainstream they are ... how obstructionist they are."

She jokingly left a glass of water at Vitter's empty seat.

Speaking at the markup this morning, Boxer said Democrats would examine all their parliamentary options and that she could even speak to Vitter about changing committee rules. She later indicated Democrats would move as quickly as possible to get 10 members present under current rules.

Committee rules say that "no measure or matter may be reported to the Senate by the committee unless a majority of committee members cast votes in person."

Sen. Frank Lautenberg (D-N.J.) is ill and back in his home state, so he was unable to come to the vote. Sen. Max Baucus (D-Mont.) was also not present.

Boxer said she has spoken to Lautenberg and that he is "fine." A spokesman for Lautenberg said the senator "will be there if Republicans force Chairman Boxer to take that path."

Republicans have pointed to a rule that says "six members, at least two of whom are members of the minority party, constitute a quorum." But Boxer and an EPW aide confirmed that the 10-member majority could override that.

The committee must provide notice of three business days before it can hold another vote, a panel aide said.

Democrats blasted the Republican move, calling it proof that Republicans were more interested in obstructionism than in debating the qualifications of the nominee. Sen. Ben Cardin (D-Md.) said it was "wrong" and another example of why there were calls to change the rules of the Senate.

Sen. Jeff Merkley (D-Ore.) said it was a "pathetic dereliction of the constitutional duty to 'advise and consent' on executive branch nominees."

And Senate Majority Leader Harry Reid (D-Nev.) vowed that McCarthy "will have her day in the Senate."

"This type of blanket, partisan obstruction used to be unheard of," Reid said. "Now it has become an unacceptable pattern."

Yesterday, Republicans on the Health, Education, Labor and Pensions Committee blocked a vote on Thomas Perez, Obama's nominee to head the Labor Department, by invoking a little-used technical rule that prevents committees from holding a meeting more than two hours after the Senate is gaveled in ([E&ENews PM](#), May 8).

Vitter responds

Democrats have criticized committee Republicans for submitting 1,000 written questions to McCarthy ahead of today's scheduled vote, but Vitter said that the minority's real priority was that EPA take more steps to boost public access to information, including a promise from McCarthy to change EPA's Freedom of Information Act policies and to stop using alternative email accounts to conduct official business.

Vitter has taken the lead in stoking Republican criticism of former EPA Administrator Lisa Jackson for using an email account under the name "Richard Windsor" to conduct agency business. While many of these issues can be attributed to Jackson, Vitter said that the current nominee is also culpable.

"Gina McCarthy is not coming in from the outside," Vitter said. "She holds a very significant position right now in that EPA, which has that dismal record on openness and transparency."

Vitter commended Boxer for not trying to change committee rules in order to move McCarthy's confirmation without Republicans, but he warned that the minority would not back down if McCarthy didn't answer their requests ahead of the rescheduled vote.

"So what will really determine what happens is what EPA does," he said.

He noted that Democrats -- including Boxer -- skipped a confirmation vote in 2003 for President George W. Bush's EPA pick, then-Utah Gov. Michael Leavitt (R), because they said his answers to their questions were incomplete.

Vitter said he didn't expect the Republicans' action to affect the panel's ability to cooperate on the bipartisan Water Resources Development Act, which is now before the full Senate.

He also brushed off questions about what the boycott might do to Republicans' relationship with McCarthy, who is still likely to be confirmed as administrator.

"I don't really care about a chummy personal relationship if we're constantly getting stonewalled on basic openness and transparency requests," he said.

By contrast, former ranking member James Inhofe (R-Okla.) often talked about his close friendship with Jackson, who he said had a picture of his grandchildren on her office wall.

Since taking over the committee's ranking member post this year, Vitter has issued a stream of press releases and FOIA requests aimed at painting EPA as secretive and unresponsive to the needs of the public ([E&E Daily](#), April 26).

'Nothing short of cowardly'

But environmentalists, who have enthusiastically supported McCarthy's nomination, were quick to slam the boycott and said it could further poison the already fraught relationship between Vitter and the agency he will help oversee.

Sierra Club Executive Director Michael Brune said in a statement that the boycott was "nothing short of cowardly."

"The Republican Senators who sat on their hands in their offices today won't just have to answer to future generations about their opposition to clean air, clean water, and healthy communities -- they'll also have to answer about why they refused to do the jobs they were elected to do," Brune said.

Elizabeth Thompson, director of congressional affairs for the Environmental Defense Fund, said Vitter was "playing the kind of political games that make Congress so unpopular."

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Daily News

EPA Proposes Weaker Methanol Risk Estimates In Latest Draft IRIS Analysis

Posted: May 9, 2013

EPA in a new draft Integrated Risk Information System (IRIS) assessment is weakening its non-cancer risk estimates for methanol from what the agency proposed in a 2011 draft, following concerns from many peer reviewers who considered the earlier draft estimates overly stringent.

EPA released an unusual [third public draft of an IRIS assessment](#) May 8 for additional public comment and another peer review. In a May 3 *Federal Register* notice announcing the new draft's availability, the agency added that it is intending to bring back as many of the same seven peer reviewers as possible to consider "whether EPA adequately responded to the comments from the July 22, 2011, peer review panel."

In its latest draft, EPA proposes non-cancer risk estimates at, or nearly at, an order of magnitude weaker than those proposed in the 2011 draft assessments. The latest IRIS draft proposes a reference dose (RfD), or maximum amount of a substance EPA estimates can be ingested daily over a lifetime without adverse non-cancer health effect, of 2 milligrams per kilogram body weight per day (mg/kg-day). Two years ago, the agency proposed an RfD of 0.4 mg/kg-day, slightly stricter than the RfD published on the IRIS website in 1993 of 0.5 mg/kg-day.

The draft's reference concentration (RfC), or the maximum amount EPA estimates can be inhaled daily over a lifetime without adverse non-cancer effects, present the agency's first attempts at calculating an inhalation risk estimate. The agency's website indicates that there was insufficient data upon which to base an RfC when the 1993 assessment was performed. But the 2011 draft RfC, like the draft RfD, was also met with concerns from peer reviewers and industry over its stringency. EPA is now proposing an RfC an order of magnitude weaker than the 2011 draft, of 20 milligrams per cubic meter (mg/m³) compared with the 2011 estimate of 2 mg/m³.

Methanol and other industry representatives strongly criticized EPA's 2011 draft, warning that if finalized, it would drive costly new regulations. Industry groups have frequently argued that the 2011 proposed RfD would be set at a level that is lower than the amount of methanol that is naturally found in a glass of orange juice, meaning the assessment would suggest that a large portion of the population would be at risk of developmental effects.

EPA's latest draft states that it "focuses principally on quantifying the non-cancer toxicity associated with exogenous oral or inhalation exposure to methanol that add to endogenous background levels. It does not address the potential carcinogenicity of methanol, or the health effects associated with endogenous background levels of methanol that arise from metabolic and normal dietary (e.g., fruit and juice consumption) sources."

Methanol Exposures

The prior draft assessment also drew concerns from most members of the peer review panel that considered the document in July 2011, due in part to questions about whether the agency had appropriately considered background and dietary methanol exposures. In an unusual move, the agency asked the panelists whether the RfD estimates were "more conservative than they need to be to protect public health?"

Five of the seven reviewers responded with concerns about the usefulness or reliability of EPA's proposed RfC or RfD. "The process of developing these RfC and RfD values has produced a result that is counter-intuitive, implying that individuals with no unusual methanol exposure may be at risk of developmental effects," wrote one of the reviewers, Stephen Roberts, a professor

at the University of Florida. "That's implausible, and clearly signals the need to re-evaluate how to consider background methanol concentrations in the development of credible toxicity values."

The agency is also working on a separate assessment of methanol's cancer risks but that effort is on a slower path than the non-cancer assessment after EPA was forced to start its cancer assessment over because an earlier, unreleased draft relied on toxicology data from the Ramazzini Institute, an Italian research laboratory that was later found to have some unreliable study results. EPA's IRIS Track website merely states that the cancer assessment's status is "to be determined."

"On the cancer side, we have not heard anything since Ramazzini was taken off the table," an industry source said May 2. "With Ramazzini out, not much [is] left as a basis for a cancer assessment. A listing of 'insufficient evidence' is probably all they can realistically do."

EPA is accepting comments on the latest non-cancer draft assessment through June 17.

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